

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

FOX VALLEY PUBLICATIONS, INC.¹

Employer

and

TEAMSTERS LOCAL 706

Petitioner

Case 13-RC-20611

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full-time and regular part-time truck drivers employed by the Employer at its location currently located at 3101 Route 30, Plainfield, Illinois 60544; but excluding independent contractors, managers, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local 706

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **July 19, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **July 26, 2001**.

DATED July 12, 2001 at Chicago, Illinois.

/s/ Elizabeth Kinney
Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing have been carefully considered.
- 3/ The Employer is a corporation engaged in the publication and distribution of newspapers to various Chicago suburbs.
- 4/ The Petitioner seeks to represent a unit of all full time and regular part time truck drivers employed by the Employer at its location currently located at 3101 Route 30, Plainfield, Illinois 60544; but excluding independent contractors, managers, guards, and supervisors as defined in the Act. The Petitioner and the Employer, as reflected in its post-hearing brief, are in agreement that the description of the unit sought by the Petitioner, and set forth above, is an appropriate unit. The only issue raised at the hearing concerned the status of Robert McKinney.

The Employer contends that McKinney, a transportation coordinator and part-time driver, is not a supervisor because he exercises no independent discretion in the exercise of his responsibilities as a transportation coordinator and shares a community of interest with other drivers in the unit. Consequently, the Employer's position is that McKinney should be included in the petitioned-for unit. In its post-hearing brief, the Petitioner contends that Robert McKinney is a supervisor as defined by the Act and should be excluded from the petitioned-for unit.

FACTS

The Employer publishes and distributes daily and weekly papers to various Chicago suburban locations seven days a week. The transportation department ("department"), under the supervision of transportation manager Phillip Winchester, is responsible for making sure that newspapers are distributed to proper destinations. The Employer employs five full-time day shift drivers, who work from 6:30 a.m. to 2:30 p.m., and six full-time and two part-time night shift drivers. Winchester oversees the day shift operations, while assistant transportation manager Tim Shain oversees the night shift. All employees in the transportation department, except for Winchester and Shain, are paid hourly and receive overtime for hours worked beyond 37 ½ hours per week. Winchester and Shain are both salaried supervisors.

In addition to the six full-time and two part-time drivers who work the Employer's night shift, Robert McKinney also works during the night shift. McKinney spends three nights of each week as a driver and two nights as the transportation coordinator. Like other drivers in the department, McKinney has a CDL-A license.

McKinney functions as the transportation coordinator on the two nights that Shain is off every week. For his role as the coordinator, McKinney does not receive any additional pay. Further, relative to other full-time drivers, McKinney is paid more than some and less than others. In his capacity as the coordinator, McKinney coordinates the distribution of the newspapers out of the Employer's facility. More specifically, McKinney picks up paperwork from the Employer's packaging department that needs to be transported to distribution centers; makes sure that all scheduled drivers are present; checks bundles of newspapers as they are produced to make sure they are in proper carts and placed in proper trucks; and deals with distribution centers regarding delivery delays caused by press problems. Before trucks go out on deliveries, McKinney verifies that each driver has completed and turned in a pre-trip truck

inspection form. McKinney also maintains truck time reports, tracking when drivers leave for and return from deliveries.

As the coordinator, McKinney does not interview applicants; recommend applicants for hire; approve leave requests for vacation or illness; discipline or discharge employees; transfer employees to and from different shifts; evaluate, reward, promote employees; or determine hiring needs. If a driver calls off work, he would contact Winchester during the day shift or Shain during the night shift. On the nights that McKinney is filling in for Shain, the driver would call McKinney. If a driver fails to show up for work, McKinney calls off-work drivers to cover for the absent driver. If McKinney is unable to solicit volunteer replacements, he contacts either Winchester or Shain at home for instructions on how to proceed. In such situations, McKinney is sometimes instructed to drive for the absent driver and have another driver, Thermon Robey, fill in as coordinator. McKinney also fills in for Shain during the time that Shain is on vacation. Although Shain has three weeks of vacation annually, he does not take more than one week at a time. Prior to taking vacation, Shain prepares the drivers' schedule for the entire vacation period; McKinney does not plan the drivers' schedules. If a driver needs time off or requests vacation during Shain's vacation period, McKinney contacts Winchester regarding these matters.

ANALYSIS

The issue to be decided in the instant case is whether Robert McKinney, the transportation coordinator should be excluded from the bargaining unit as a supervisor. The Petitioner contends that McKinney is a supervisor, while the Employer contends that he is not.

Section 2(11) of the Act sets forth the test to determine supervisory status:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The possession of any one of these indicia is sufficient to confer supervisory status, but only if the exercise thereof involves independent judgment. *See Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985) modified on other grounds 794 F.2d 527 (9th Cir, 1986); *see also Children's Farm Home*, 324 NLRB 61, 65 (1997). An individual does not become a supervisor through the exercise of "some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner," or through giving "some instructions or minor orders to other employees." *Chicago Metallic*, 273 NLRB at 1689. Serving as a conduit for management's instructions or for the assignment of predetermined tasks, without more, does not confer supervisory status. *See McCollough Environmental Services*, 306 NLRB 565, 566 (1992); *see also Quadrex Environmental Co.*, 308 NLRB 101 (1992). An employee who inspects the work of others and reports on improper work performance is not a supervisor unless he has the authority to

effectuate ultimate personnel decisions. *See Somerset Welding and Steel*, 291 NLRB 913, 914 (1988); *see also Quadrex*, 308 NLRB at 101.

The Board has held that the performance of dispatching duties in conformity with an employer's instructions, practice, and set pattern, within parameters set by the employer, does "not require a sufficient exercise of independent judgment to satisfy" the statutory definition of a supervisor. *Express Messenger Systems*, 301 NLRB 651, 654 (1991); *see also B.P. Oil, Inc.*, 256 NLRB 1107 (1981) *enfd* 681 F.2d 804 (3rd Cir. 1982). A dispatcher's "meager duties" such as making up drivers' schedules, giving them the schedules, posting the schedules, and granting time off, has been found to be insufficient to establish that such an employee is a statutory supervisor. *National Livery Service*, 281 NLRB 698, 702(1986).

In the instant case, there is no evidence that McKinney is a statutory supervisor. McKinney has been working as a transportation coordinator since January 1999. McKinney reports to Winchester and Shain, who supervise drivers on the day and night shifts, respectively. McKinney receives the same benefits as the drivers, and a comparable hourly wage rate. When Shain is out of the office, McKinney oversees the distribution of the product out of the facility.

The record reflects that none of McKinney's activities in his capacity as the coordinator requires him to exercise independent judgment with regard to any of the supervisory indicia enumerated in Section 2(11) of the Act. McKinney does not schedule drivers, assign routes to them, or transfer drivers from one shift to another. When Shain goes on vacation, driver schedules are prepared by Shain in advance and there is no evidence in the record that McKinney's responsibilities change or increase during this time. If a driver needs time off or requests vacation during Shain's vacation period, McKinney must contact Winchester regarding these matters. The record shows that McKinney exercises no supervisory discretion in contacting substitute drivers; he merely solicits volunteers, and can not require any driver to come in. When he is unable to secure volunteers, he contacts Winchester or Shain for instructions on how to resolve the situation. Further, the record also shows that when Shain and McKinney are both unavailable to oversee the night shift delivery operations, driver Robey fills in as coordinator. The fact that a rank-and-file employee, with no special training, can fill in for an alleged supervisor, further indicates the "essential simplicity" and "lack of discretion" of McKinney's position, and his lack of supervisory authority. *Spector Freight System, Inc.*, 216 NLRB 551, 552 (1975). Moreover, the uncontroverted evidence establishes that McKinney has never interviewed, hired, discharged, or disciplined employees, nor has he ever been told he has the authority to do so.

I am not persuaded by the Petitioner's argument that McKinney is a supervisor because he spends a regular and substantial portion of his work time substituting for an acknowledged supervisor directing the petitioned-for drivers. Based on the overall record, I find that McKinney delivers instructions and assignments predetermined by Shain and/or Winchester to drivers, and he has no authority to and does not exercise any of the Section 2(11) supervisory indicia using independent judgment to effectuate any personnel decisions with respect to the petitioned-for drivers. I find *Aladdin Hotel*, 270 NLRB 838 (1984) and the other cases cited by the Petitioner to be factually distinguishable from the facts found herein. In *Aladdin Hotel* the casino dealers, who were found to be supervisors, possessed "the *full* extent of [the full-time boxmen and

floormen's] supervisory authority when substituting" for them. *Id.* at 839, emphasis added. Similarly, in the other cases cited by the Petitioner, the employees substituting for Section 2(11) supervisors on a regular basis were themselves found to exercise supervisory authority when so substituting. In the instant case, the record is clear in showing that while McKinney substitutes for some of Shain's duties, he does not take over any of Shain's duties that require the exercise of supervisory authority.

Accordingly, based on the foregoing and the record as a whole, I find the transportation coordinator Robert McKinney is not a statutory supervisor as defined by Section 2(11) of the Act. Furthermore, as he regularly spends a substantial portion of his time driving and performing the same functions as the other employees included in the unit I find that he is appropriately included in the unit and eligible to vote. *Berea Publishing Company*, 140 NLRB 516, 519 (1963).

There are approximately fourteen employees in the unit found appropriate.

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